

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-186006

DATE: June 17, 1976

MATTER OF: Silent Hoist & Crane Co., Inc.

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098424

## DIGEST:

1. Prospect of substantial monetary savings through exercise of option under previously awarded contract is sufficient basis to justify cancellation of IFB after bid opening in best interest of Government.
2. Solicitation may be cancelled after bid opening if only remaining acceptable bid is unreasonably priced as compared to other price received notwithstanding protester's contention that contingency against continued inflation had to be included in price because of agency's failure to include economic price adjustment provision in solicitation.
3. Protester's allegation that auction was created by resolicitation of bids is without merit where low bid on resolicitation was substantially lower than protester's bid and low bidder was also low by substantial amount on prior solicitation.

Silent Hoist and Crane Company, Inc., protests under IFB DSA700-76-B-1075 issued February 4, 1976, by the Defense Construction Supply Center (DCSC), Columbus, Ohio. This solicitation sought bids for rubber-tired, gasoline or diesel engine driven, warehouse crane trucks for use at two Marine installations. This requirement had previously been solicited under IFB DSA700-75-B-1483, issued by DCSC on January 10, 1975 and IFB DSA700-76-B-0260, issued on September 15, 1975. Both prior solicitations had been cancelled for various reasons discussed below.

Silent Hoist complains that because bid opening had occurred under the cancelled solicitations, this third attempt to procure constitutes an auction. Silent Hoist requests that this Office instruct DCSC to cancel the current solicitation and negotiate a contract with it.

The initial solicitation, IFB -1483, was issued on January 10, 1975. At bid opening on March 18, 1975, Silent Hoist, the only

bidder, bid \$52,642.86 for item 1 and \$52,324.69 for item 2. However, it was discovered that an option existed under contract DSA700-75-C-8467, awarded on March 12, 1975, for what appeared to be essentially the same items at a cost of \$79,310. The contracting officer determined that cancellation of the IFB was in the best interest of the Government and that the Government's requirements should be met by exercising the option under the existing contract. The solicitation accordingly was cancelled on May 7, 1975.

The Armed Services Procurement Regulation (ASPR) § 2-404.1(a) (1975) provides that an IFB should not be cancelled after bid opening except for cogent reasons. We have recognized that there is a wide area of discretion accorded the contracting officer in deciding after bid opening to reject all bids and that one recognized reason for cancellation is the prospect of substantial monetary savings to the Government. B-171761, November 30, 1971; 36 Comp. Gen. 364 (1956). No objection, therefore, is raised with respect to the contracting officer's determination that cancellation of IFB-1483, was in the best of interest to the Government in the light of the substantial cost savings to be effected by the exercise of the option.

Subsequent to the cancellation of the IFB, DCSC learned that changes were required by the user agency (the Department of the Navy), to the items furnished under contract DSA700-75-C-8467. Such changes rendered the items unacceptable for use by the Marine Corps and negated the possibility of exercising the contract option to meet the Marine Corps requirements. Resolicitation of the required items became necessary since the IFB had been cancelled.

A second solicitation, IFB-0260, was issued on September 15, 1975, and bids were opened on October 15, 1975. Bids were received from the protester and from Correct Manufacturing Corporation as follows:

	<u>Item 1</u>	<u>Item 2</u>
1. Silent Hoist	\$44,561.23	\$44,255.10
2. Correct Mfg.	22,660.00	22,660.00

A pre-award survey on the low bidder was conducted, resulting in a recommendation of a total award to Correct Manufacturing. Prior to award, however, DCSC was notified that Ben-Ju Corporation had purchased the assets of the Roustabout Crane Division of Correct

Manufacturing. Ben-Ju requested that award be made directly to it. DCSC determined that the sale of Correct Manufacturing's assets raised serious problems concerning award to Ben-Ju Corporation. Because of questions involving transfer of bid rights and whether Correct Manufacturing continued to qualify for award as a regular dealer or manufacturer under the Walsh-Healy Public Contracts Act, DCSC determined that award could not be made to Correct Manufacturing or Ben-Ju Corporation. At the same time, Silent Hoist's bid, when compared to Correct Manufacturing's, was determined to be unreasonable. The contracting officer therefore decided that IFB -0260 should be cancelled because of unreasonable price.

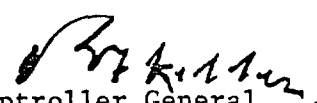
DCSC again solicited bids on its requirements on February 4, 1976, by issuing IFB -1075. By letter dated February 9, 1976, Silent Hoist protested to DSA that this third solicitation of bids constituted an auction since its bids had been exposed under the prior two solicitations. Bid opening was held February 20, 1976, at which time bids were received from Ben-Ju and Silent Hoist:

	<u>Item 1</u>	<u>Item 2</u>
1. Silent Hoist	\$43,111.22	\$43,022.45
2. Ben-Ju	29,496.00	29,046.00

Prior to any agency action on its protest, Silent Hoist protested to this Office on March 1, 1976, contending, in effect, that its price was not unreasonable in view of the need to protect itself against continued inflation because of the agency's failure to include an economic price adjustment provision in the solicitation.

We appreciate the consequences of rejecting all bids and resoliciting after bids have been opened. However, as noted above such action is within the contracting officer's discretion where circumstances indicate that the award would not be at a reasonable price. As to whether the price unreasonableness resulted from the failure to include an economic price adjustment provision in the solicitation, we think it is significant to note that the contracting officer's conclusion derived from the disparity in bids submitted in response to the same IFB.

Accordingly, the protest is denied.

  
Deputy, Comptroller General  
of the United States